

MAR 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOUGLAS R. BOESE,

Plaintiff - Appellant,

v.

BILL SLAUGHTER, Director MDOC; et
al.,

Defendants - Appellees.

No. 07-35313

D.C. No. CV-05-00028-GF-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Montana state prisoner Douglas R. Boese appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his medical needs. We have jurisdiction pursuant to 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment because Boese failed to create a triable issue of fact as to whether defendants were deliberately indifferent to his medical needs. *See id.* at 1054, 1057-58.

The district court did not abuse its discretion in denying Boese's motion to compel discovery because he did not demonstrate that additional discovery would have precluded summary judgment. *See Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1026 (9th Cir. 2006).

Boese's remaining contentions are unpersuasive.

AFFIRMED.